

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAW SCHOOL ADMISSION COUNCIL,
INC.,

Plaintiff,

v.

MORLEY TATRO,
d/b/a CAMBRIDGE LSAT

Defendant.

Civil Action No. 15:5219-MAK

**NOTICE OF PLAINTIFF LAW SCHOOL ADMISSION COUNCIL, INC. OF
MOTION TO DISMISS CALIFORNIA ACTION BETWEEN THE PARTIES**

Plaintiff Law School Admission Council, Inc. ("LSAC") hereby notifies the Court that, on December 17, 2015, it moved to dismiss the amended complaint filed in the Central District of California action captioned *Morley Cambridge Tatro v. Law Sch. Admission Council, Inc., et al.*, Case No. 2:15-cv-07627-RGK-JEM ("California Action"). A copy of the motion is attached. The motion relates to section III.C of LSAC's Opposition to Defendant's Motion To Dismiss For Lack of Personal Jurisdiction And Improper Venue (Docket Index No. 24).

Dated: December 18, 2015

Respectfully submitted,

/s/ John V. Gorman

John V. Gorman (PA Bar No. 80631)

jgorman@morganlewis.com

Amy M. Dudash (PA Bar No. 311898)

adudash@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103

Tel: 215.963.5000

Fax: 215.963.5001

CERTIFICATE OF SERVICE

I, John V. Gorman, hereby certify that on December 18, 2015, I caused a copy of the foregoing document to be filed via the Court's CM-ECF system, which will send electronic notice to the following:

Julie D. Lathia, Esquire
The Law Offices of Julie D. Lathia
212 West Gay Street
West Chester, PA 19380

Eric Meinhardt, Esquire
Lexero Law
316 F. Street NW
Suite 101
Washington, DC 20002

/s/ John V. Gorman
John V. Gorman

1 Monique E. Cho (Bar No. 252203)
2 mcho@morganlewis.com
3 MORGAN, LEWIS & BOCKIUS LLP
4 200 South Grand Avenue
5 Twenty-Second Floor
6 Los Angeles, CA 90071-3132
7 Tel: 213.612.2500
8 Fax: 213.612.2501

9 John V. Gorman (admitted *pro hac vice*)
10 jgorman@morganlewis.com
11 MORGAN, LEWIS & BOCKIUS LLP
12 1701 Market Street
13 Philadelphia, PA 19103
14 Tel: 215.963.5000
15 Fax: 215.963.5001

16 Anita B. Polott (admitted *pro hac vice*)
17 apolott@morganlewis.com
18 MORGAN, LEWIS & BOCKIUS LLP
19 1111 Pennsylvania Ave. N.W.
20 Washington, DC 20004-2541
21 Tel: 202.739.3000
22 Fax: 202.739.3001

23 *Attorneys for Defendant Law School*
24 *Admission Council, Inc.*

25 UNITED STATES DISTRICT COURT
26 CENTRAL DISTRICT OF CALIFORNIA

27 MORLEY CAMBRIDGE TATRO,

28 Plaintiff,

vs.

LAW SCHOOL ADMISSION
COUNCIL, INC. and DOES 1-50,

Defendants.

Case No. 2:15-cv-07627-RGK-JEM

**NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFF'S AMENDED
COMPLAINT, OR, IN THE
ALTERNATIVE, TO TRANSFER
BY LAW SCHOOL ADMISSION
COUNCIL, INC.**

**[FED. R. CIV. P. 12(B)(6); FED. R.
CIV. P. 12(B)(1); 28 U.S.C. §
1404(A), 28 U.S.C. § 2201]**

Judge: Hon. R. Gary Klausner

Date: January 25, 2016

Time: 9:00 a.m.

Courtroom: 850

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 25, 2016 at 9:00 am, or on such other date to be set by the Court, at 312 N. Spring St., Los Angeles, CA 90012, in Courtroom 850, before the Honorable R. Gary Klausner, defendant Law School Admission Council, Inc. (“LSAC”) will and hereby does move the Court, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and 28 U.S.C. § 2201 for an order dismissing the First Amended Complaint (Docket Index 28) (“Amended Complaint”) filed by plaintiff Morley Cambridge Tatro (“Plaintiff”). In the alternative, LSAC will and hereby does move the Court, pursuant to 28 U.S.C. § 1404(a), to transfer the instant action to the United States District Court for the Eastern District of Pennsylvania.

LSAC moves to dismiss the Amended Complaint on the following grounds:

First, the Court should exercise its discretion to dismiss this declaratory judgment action, which is precisely the type of action that courts routinely dismiss in favor of later-filed actions – *i.e.*, a tactically-filed declaratory judgment action meant to disrupt settlement discussions and to win the race to the courthouse before LSAC could file its own affirmative copyright infringement action.

Second, the Court should dismiss the Amended Complaint with prejudice because it fails to state a claim for relief. Plaintiff’s claim is premised on a purported right to 30 days notice before license termination found in LSAC’s Licensing Policy, but by its express terms, the Licensing Policy does not displace LSAC’s right to terminate the Licensing Agreement for any reason at any time.

LSAC moves in the alternative to transfer this action to the Eastern District of Pennsylvania on the following ground:

Even if the Court were to conclude that the Amended Complaint could survive dismissal, the Court should exercise its discretion to transfer the instant

1 action to the United States District Court for the Eastern District of Pennsylvania
 2 where the parties are already litigating, engaging in discovery, and proceeding to a
 3 trial in a case involving overlapping – yet broader – factual and legal issues because
 4 the interests of justice and convenience factors warrant transfer.

5 This Motion is made following a conference of counsel. LSAC did not
 6 decide to dismiss the Amended Complaint until after seven days before the date of
 7 filing the instant Motion. Upon determining that it was going to move to dismiss
 8 the Amended Complaint, LSAC's counsel promptly contacted Plaintiff's counsel to
 9 confer regarding the Motion. Although Plaintiff's counsel was unavailable for
 10 several days, counsel for the parties were able to confer before the filing of the
 11 Motion, and LSAC's counsel presented the bases for its Motion, but counsel were
 12 unable to resolve their disputes regarding the issues presented herein. While LSAC
 13 hereby notices the hearing date for its motion for January 25, 2016, it has no
 14 objection to rescheduling the hearing date to Monday, February 1, 2016.

15 This Motion is based on this Notice of Motion and Motion, the Memorandum
 16 of Points and Authorities filed concurrently herewith, the Request for Judicial
 17 Notice and accompanying documents filed therewith, the Reply filed in support of
 18 the Motion, all pleadings and papers on file or to be filed in the above-entitled
 19 action, arguments of counsel, and any other matters that may properly come before
 20 the Court for its consideration.

21 Dated: December 17, 2015

MORGAN, LEWIS & BOCKIUS LLP

23 /s/ John V. Gorman

24 Monique E. Cho
 25 John V. Gorman
 Anita Polott

26 ***Attorneys for Defendant Law School***
 27 ***Admission Council, Inc.***

Monique E. Cho (Bar No. 251949)
mcho@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
200 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071-3132
Tel: 213.612.2500
Fax: 213.612.2501

John V. Gorman (admitted *pro hac vice*)
jgorman@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel: 215.963.5000
Fax: 215.963.5001

Anita B. Polott (admitted *pro hac vice*)
apolott@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave. N.W.
Washington, DC 20004-2541
Tel: 202.739.3000
Fax: 202.739.3001

*Attorneys for Defendant Law School
Admission Council, Inc.*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MORLEY CAMBRIDGE TATRO,

Plaintiff,

vs.

LAW SCHOOL ADMISSION
COUNCIL, INC. and DOES 1-50

Defendants.

Case No. 2:15-cv-07627-RGK-JEM

**DEFENDANT LAW SCHOOL
ADMISSION COUNCIL, INC.'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF ITS MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, TO TRANSFER**

Judge: Honorable R. Gary Klausner

Date: January 25, 2016

Time: 9:00 a.m.

Courtroom: 850

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND	2
A. The Parties’ Licensing Relationship	2
B. The Instant Action.....	3
C. The Pennsylvania Action	4
III. ARGUMENT	4
A. The Court Should Exercise Its Discretion to Decline Jurisdiction Over the Instant Declaratory Judgment Action.	4
1. A Court Has Broad Discretion to Decline to Exercise Declaratory Judgment Jurisdiction	5
2. Each of the Applicable Factors Weighs In Favor of This Court Declining to Exercise Declaratory Judgment Jurisdiction.....	5
3. The First-Filed Doctrine Is Inapplicable to This Anticipatory Lawsuit	9
B. The Court Should Dismiss This Action Because Plaintiff Has Not Stated a Cognizable Claim For Relief.	10
1. The Court May Dismiss Plaintiff’s Claim Based on Plain and Unambiguous Language of the Licensing Agreement	10
2. Plaintiff’s Allegations Regarding Purported Breach Fail as a Matter of Law	10
C. Alternatively, the Court Should Transfer the Instant Action to the Eastern District of Pennsylvania.	13
1. The Instant Action Could Have Been Brought In Pennsylvania	13
2. The Convenience Factors Weigh In Favor of Transfer	14
a. Plaintiff’s Choice of Forum Is Entitled to Little Weight	14
b. The Convenience of Parties Factor Is Neutral	14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c.	The Convenience of Witnesses Factor Weighs In Favor of Transfer.....	14
d.	Ease of Access to Evidence Is a Neutral Factor.....	15
3.	The Interest of Justice Factors Weigh In Favor of Transfer.....	15
a.	Court’s Familiarity With Governing Law Is Neutral.....	15
b.	Feasibility of Consolidation With Other Claims Favors Transfer.....	16
c.	Local Interest In the Controversy Is Neutral.....	16
d.	Relative Court Congestion Weighs In Favor of Transfer.....	16
IV.	CONCLUSION	17

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Budget Rent A Car Corp. v. Miljack, Inc.</i> , 760 F. Supp. 135 (N.D. Ill. 1991).....	8
<i>Burke v. USF Reddaway, Inc.</i> , No. 2:12-cv-02641, 2013 WL 85428 (E.D. Cal. Jan. 8, 2013)	15
<i>Campbell v. Allstate Ins. Co.</i> , No. 97-9426, 1998 WL 657488 (C.D. Cal. Aug. 6, 1988).....	10
<i>Cardoza v. T-Mobile USA Inc.</i> , No. 08-5120, 2009 WL 723843 (N.D. Cal. Mar. 18, 2009)	16
<i>Decker Coal Co. v. Commonwealth Edison Co.</i> , 805 F.2d 834 (9th Cir. 1986)	13
<i>Ellsworth v. U.S. Bank, N.A.</i> , 908 F. Supp. 2d 1063 (N.D. Cal. 2012).....	10
<i>Gerin v. Aegon USA, Inc.</i> , No. 06-5407, 2007 WL 1033472 (N.D. Cal. Apr. 4, 2007)	15
<i>Gov't Emps. Ins. Co. v. Dizol</i> , 133 F.3d 1220 (9th Cir. 1997).....	5
<i>Gribin Galleries, Div. of Hammer Holdings, Inc.</i> , 793 F. Supp. 233 (C.D. Cal. 1992)	
<i>Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc.</i> , 179 F.R.D. 264 (C.D. Cal. 1998)	13
<i>Inherent.com v. Martindale-Hubbell, Lexis/Nexis, Inc.</i> , 420 F. Supp. 2d 1093 (N.D. Cal. 2006).....	9
<i>Ins. Co. of N. Am. v. Fed. Exp. Corp.</i> , 189 F.3d 914 (9th Cir. 1999).....	11
<i>Int'l Bhd. of Teamsters v. N. Am. Airlines</i> , No. C05-0126, 2005 WL 947083 (N.D. Cal. Apr. 20, 2005).....	15

1	<i>K-Swiss, Inc. v. Puma AG Rudolf Dassler Sport,</i>	
2	No. CV 09-3022, 2009 WL 2049702 (C.D. Cal. July 9, 2009)	6
3	<i>Kinetic Concepts, Inc. v. Connetics Corp.,</i>	
4	No. Civ. A. SA-04-CA0237XR, 2004 WL 2026812 (W.D. Tex. Sept. 8,	
5	2004).....	6, 8
6	<i>Koch Eng'g Co. v. Monsanto Co.,</i>	
7	621 F. Supp. 1204 (E.D. Mo. 1985)	8
8	<i>Lateena Girls, LLC v. Latina Media Ventures, LLC,</i>	
9	No. SA-06-CA-217-RF, 2006 WL 2547884 (W.D. Tex. Aug 9, 2006)	8
10	<i>Logan v. Union Sec. Ins. Co.,</i>	
11	No. CV 14-1174 DMG, 2015 WL 3745047 (C.D. Cal. Mar. 31, 2015)	12
12	<i>Martin v. U-Haul Co. of Fresno,</i>	
13	204 Cal. App. 3d 396 (Cal. Ct. App. 1988).....	7
14	<i>Maryland Cas. Co. v. Knight,</i>	
15	96 F.3d 1284 (9th Cir. 1996)	6
16	<i>Mass Bonding Ins. Co. v. Johnston & Harder,</i>	
17	35 A.2d 721 (Pa. 1943).....	7
18	<i>May v. Haas,</i>	
19	No. 2:12-cv-01791, 2013 WL 4010293 (E.D. Cal. Aug. 5, 2013).....	15
20	<i>Mendler v. Winterland Production, Ltd.,</i>	
21	207 F.3d 1119 (9th Cir. 2000).....	10
22	<i>Metz v. U.S. Life Ins. Co.,</i>	
23	674 F. Supp. 2d 1141 (C.D. Cal. 2009).....	14, 15
24	<i>Mieuli v. DeBartolo,</i>	
25	No. C-00-3225, 2001 WL 777447 (N.D. Cal. Jan. 16, 2001)	10
26	<i>Oliver & Tater Enters., Inc. v. Foundations Worldwide, Inc.,</i>	
27	No. CV 13-01683-RGK, 2013 WL 4446827 (C.D. Cal. June 18, 2013).....	9
28	<i>Schmitt v. JD Edwards World Solutions Co.,</i>	
	No. C. 01-1009, 2001 WL 590039 (N.D. Cal. May 18, 2001)	6

<i>Sprengel v. Mohr</i> , No. CV 11-08742-MWF, 2013 WL 645532 (C.D. Cal. Feb. 21, 2013)	7
<i>Stewart Org., Inc v. Ricoh Corp.</i> , 487 U.S. 22 (1988)	13
<i>Szegedy v. Keystone Food Prods.</i> , No. CV 08-5369, 2009 WL 2767683 (C.D. Cal. Aug. 26, 2009)	15
<i>United States v. Ritchie</i> , 342 F.3d 903 (9th Cir. 2003)	1
<i>Wilton v. Seven Falls Co.</i> , 515 U.S. 277 (1995)	5
<i>Xoxide, Inc. v. Ford Motor Co.</i> , 448 F. Supp. 2d 1188 (C.D. Cal. 2006)	6, 9
STATUTES	
28 U.S.C. § 1404(a)	1, 2, 13
Ann. Cal. Civ. Code § 1641	12
28 U.S.C. 2201	1
OTHER AUTHORITIES	
Fed. R. Civ. P. 12(b)(1)	1
Fed. R. Civ. P. 12(b)(6)	1

I. INTRODUCTION

Defendant Law School Admission Council, Inc. (“LSAC”) moves to dismiss the First Amended Complaint (Docket Index (“D.I.”) 28) (“FAC” or “Amended Complaint”) filed by plaintiff Morley Cambridge Tatro (“Plaintiff” or “Mr. Tatro”) pursuant to this Court’s discretionary authority under the Declaratory Judgment Act, 28 U.S.C. § 2201, and Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure, or, in the alternative, to transfer the action to the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1404(a).

First, the Court should exercise its discretion to dismiss this declaratory judgment action because it is precisely the type of action that courts routinely dismiss in favor of later-filed actions – *i.e.*, a tactically-filed declaratory judgment action meant to disrupt settlement discussions and to win the race to the courthouse before LSAC could file its own affirmative copyright infringement action. By Plaintiff’s own admission, he filed this case because LSAC told him that if settlement negotiations did not result in resolution, LSAC would file a copyright infringement action in Pennsylvania.

Second, the Court should dismiss the Amended Complaint because it fails to state a claim for relief. Plaintiff’s claim is premised on a misguided and unsupported reading of the parties’ contract – the Licensing Agreement¹ – which unambiguously provides that LSAC has an unfettered right to terminate the

¹ Although the Amended Complaint references the Licensing Agreement (attached hereto as Exhibit A) and LSAC’s LSAT-Question Licensing Policy (“Licensing Policy”) (attached hereto as Exhibit B) and purports to attach these two documents to the pleading, FAC ¶ 9, neither the Licensing Agreement nor the Licensing Policy were, in fact, attached. However, the Court may consider these documents in deciding the instant Motion because these documents are referenced extensively in the Amended Complaint and form the basis for Plaintiff’s claim. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.”).

Licensing Agreement at any time for any reason. Plaintiff's claim is premised on a purported right to 30 days notice before license termination found in LSAC's Licensing Policy. However, by its express terms, the Licensing Policy does not displace the parties' bargained for contractual language contained in the Licensing Agreement. Thus, Plaintiff's declaratory judgment claim fails as a matter of law.

Third, even if the Court were to conclude that the Amended Complaint could survive dismissal, the Court should exercise its discretion to transfer the instant action to the United States District Court for the Eastern District of Pennsylvania where the parties are already litigating, engaging in discovery, and proceeding to a trial in a case involving overlapping – yet broader – factual and legal issues.

II. FACTUAL BACKGROUND

A. The Parties' Licensing Relationship.

LSAC is a non-profit corporation that administers the Law School Admission Test ("LSAT"). *See* FAC ¶ 3. Since 2009, LSAC has licensed to Plaintiff the non-exclusive right to use, print, reproduce and distribute certain questions from previous LSATs ("LSAT Questions") under certain conditions. *See id.* ¶ 9. The parties' most recent agreement was set forth in a Licensing Agreement dated June 15, 2015. *See id.*; Ex. A. In the first paragraph, the License Agreement states that it "is subject to LSAC's LSAT-Question Licensing Policy and the following terms and conditions." *Id.* Paragraph 2 of the Licensing Agreement governs the license term of the parties' agreement. It states:

This license expires June 30, 2017, but may be renewed at the option of LSAC if the licensed questions are still published by LSAC. Any violation of any term or condition of this license voids the license. ***In addition, LSAC may terminate this license at its sole discretion at any time and for any reason.***

See Ex. A. ¶ 2 (emphasis added). To the extent that the Licensing Policy deals with the license term, it expressly defers to the language of the License Agreement. *See* Ex. B at 1 ("Term of the Agreement. ***Unless otherwise specified in the licensing***

1 **agreement**, all new licenses and license renewals begin on July 1 of the initial year
 2 and expire on June 30 of the second year.”) (emphasis added). Thus, under the
 3 express terms of the License Agreement, the license term ends June 30, 2017, or
 4 whenever LSAC terminates it, whichever is sooner.

5 **B. The Instant Action.**

6 On August 4, 2015, LSAC sent Mr. Tatro an e-mail communication
 7 terminating the License Agreement effective August 15, 2015. See Original
 8 Complaint, Dkt. No. 1, Ex. 1 (attached as Exhibit 1 to Declaration of John V.
 9 Gorman (“Gorman Decl.”) filed contemporaneously with Request for Judicial
 10 Notice). Thereafter, the parties entered into negotiations to attempt to resolve their
 11 dispute regarding, *inter alia*, Mr. Tatro’s impermissible use of LSAT’s copyrighted
 12 materials. *Id.* ¶ 7. On September 2, 2015, while in the midst of these negotiations,
 13 Mr. Tatro filed the Original Complaint against LSAC in California state court
 14 asserting claims for breach of contract, breach of the covenant of good faith and fair
 15 dealing, and declaratory judgment. See *id.* In the Original Complaint, Mr. Tatro
 16 admitted that the basis for the lawsuit was that LSAC had informed him that, if the
 17 parties could not resolve their dispute, LSAC would file suit for copyright
 18 infringement in Pennsylvania. See D.I. 1, Ex. 1 (Gorman Decl., Ex. 1) ¶¶ 1, 10, 19.
 19 LSAC subsequently removed the action to the instant court. See D.I. 1.

20 On November 19, 2015, this Court dismissed the Original Complaint in its
 21 entirety. See D.I. 27. The Court dismissed the majority of Mr. Tatro’s claims with
 22 prejudice, but allowed him an opportunity to file an amended complaint containing
 23 only a claim regarding breach of the Licensing Agreement. *Id.* at 7. On November
 24 30, 2015, Mr. Tatro filed the Amended Complaint containing a single claim for
 25 relief – *i.e.*, a claim seeking a judicial declaration that LSAC did not properly
 26 terminate the Licensing Agreement because it failed to provide Mr. Tatro with 30
 27 days notice prior to terminating the Licensing Agreement. See FAC.

1 **C. The Pennsylvania Action.**

2 As promised, on September 18, 2015, LSAC filed a complaint against Mr.
3 Tatro for willful copyright infringement in the United States District Court for the
4 Eastern District of Pennsylvania. *See* Complaint, *Law Sch. Admission Council, Inc.*
5 *v. Morley Tatro d/b/a Cambridge LSAT*, C.A. No. 2:15-cv-05219-MAK (E.D. Pa.)
6 (the “Pennsylvania Action”) (attached as Exhibit 2 to the Gorman Decl.). In the
7 Pennsylvania Action, LSAC seeks damages for Mr. Tatro’s unauthorized use of
8 LSAC’s copyrighted materials during different time periods, including: (1) the time
9 period after the Licensing Agreement was terminated, and (2) the time period
10 during which Mr. Tatro was subject to a license, but also during which he used
11 LSAC’s copyrighted materials in a manner inconsistent with and beyond the scope
12 of the terms of the Licensing Agreement, and therefore, in a manner unlicensed by
13 LSAC. *See id.*

14
15 **III. ARGUMENT**

16 **A. The Court Should Exercise Its Discretion to Decline Jurisdiction**
17 **Over the Instant Declaratory Judgment Action.**

18 The Declaratory Judgment Act was not intended to be a strategic procedural
19 vehicle whereby a putative defendant – such as Mr. Tatro – could strip a putative
20 plaintiff – such as LSAC – of its choice of forum or a tool to reward the winner of a
21 race to the courthouse. However, this is precisely what Mr. Tatro has attempted to
22 do in filing the instant action. While this case is technically the first-filed in terms
23 of timing, it is not entitled to any deference in determining which action should
24 proceed. Accordingly, the Court should exercise its discretion to dismiss the instant
25 action in favor of the Pennsylvania Action.

1 **1. A Court Has Broad Discretion to Decline to Exercise**
2 **Declaratory Judgment Jurisdiction.**

3 “Since its inception, the Declaratory Judgment Act has been understood to
4 confer on federal courts unique and substantial discretion in deciding whether to
5 declare the rights of litigants.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286
6 (1995). “The normal principle that federal courts should adjudicate claims within
7 their jurisdiction yields to considerations of practicality and wise judicial
8 administration.” *Id.* at 288; *see also id.* (“By the Declaratory Judgment Act,
9 Congress sought to place a remedial arrow in the district court’s quiver; it created
10 an opportunity, rather than a duty, to grant a new form of relief to qualifying
11 litigants.”).

12 **2. Each of the Applicable Factors Weighs In Favor of This**
13 **Court Declining to Exercise Declaratory Judgment**
14 **Jurisdiction.**

15 In evaluating whether to exercise declaratory judgment jurisdiction, the Court
16 may consider a variety of factors, including, *inter alia*, (1) discouraging litigants
17 from filing declaratory actions as a means of forum shopping; (2) avoiding
18 duplicative litigation; (3) whether the declaratory action will settle all aspects of the
19 controversy; (4) whether the declaratory action will serve a useful purpose in
20 clarifying the legal relations at issue; (5) whether the declaratory action is being
21 sought merely for the purposes of procedural fencing or to obtain a ‘res judicata’
22 advantage; and (6) convenience of the parties and relative convenience of other
23 remedies. *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 & n.5 (9th Cir.
24 1997).² Here, these factors weigh in favor of declining declaratory judgment

25 ² These factors were initially discussed in connection with a court’s decision to
26 decline to exercise jurisdiction over a federal action where there was a state court
27 action pending, but they are equally applicable to the decision to decline to exercise
28 jurisdiction in favor of another pending federal court action. *See Gribin Galleries,*
Div. of Hammer Holdings, Inc., 793 F. Supp. 233, 234 n.1 (C.D. Cal. 1992)
(dismissing first-filed declaratory judgment action in favor of later-filed federal
court action, and noting that these factors “appl[y] where the parallel action is
pending in another federal district”).

jurisdiction.

First, the events giving rise to the instant action demonstrate that it was nothing more than an improperly filed anticipatory lawsuit used for procedural fencing. While the parties were engaged in settlement negotiations regarding claims arising out of Mr. Tatro's use of LSAC's copyrighted materials, Mr. Tatro filed the instant litigation for tactical forum-shopping reasons. Indeed, in the Original Complaint, Mr. Tatro admitted that the reason for filing the lawsuit was to seek relief in advance of LSAC's potential lawsuit in Pennsylvania. *See* D.I. 1, Ex. 1 (Gorman Decl., Ex. 1) ¶ 1 (“[LSAC] . . . has, instead, repeatedly and **wrongfully threatened to take legal action against Plaintiff in Pennsylvania** on certain claims released by the contract.”) (emphasis added); ¶ 10 (“In breach of its obligations under the Contract, TATRO is informed and believes that LSAC intends to proceed with pursuing legal action against TATRO in the state of Pennsylvania alleging copyright infringement.”); ¶ 19 (referencing fact that LSAC had stated “its intention to sue [Tatro] in Pennsylvania”). Where a first-filed case is “reactive” to a second-filed case, a “district court should consider dismissing the [first] case pursuant to its discretion under the Act.” *Maryland Cas. Co. v. Knight*, 96 F.3d 1284, 1289 (9th Cir. 1996). This action is plainly a reaction to the claims that LSAC brought in the Pennsylvania Action.

Plaintiff's conduct is the precise sort of procedural gamesmanship that courts routinely find warrants dismissal of a “first-filed” action. *See Xoxide, Inc. v. Ford Motor Co.*, 448 F. Supp. 2d 1188, 1193 (C.D. Cal. 2006) (dismissing first-filed action due to anticipatory forum shopping); *K-Swiss, Inc. v. Puma AG Rudolf Dassler Sport*, No. CV 09-3022, 2009 WL 2049702, at *3 (C.D. Cal. July 9, 2009) (same); *Schmitt v. JD Edwards World Solutions Co.*, No. C. 01-1009, 2001 WL 590039, at *3 (N.D. Cal. May 18, 2001) (same); *Kinetic Concepts, Inc. v. Connetics Corp.*, No. Civ. A. SA-04-CA0237XR, 2004 WL 2026812, at *5 (W.D. Tex. Sept. 8, 2004) (same).

1 Second, dismissing this case will avoid duplicative litigation of a limited
2 issue that Plaintiff potentially will raise as a defense in the Pennsylvania Action:
3 *i.e.*, whether the Licensing Agreement contained a notice provision that gave Mr.
4 Tatro license rights in LSAC's copyrighted material beyond August 15, 2015. *See*
5 *Sprengel v. Mohr*, No. CV 11-08742-MWF, 2013 WL 645532, at *9 (C.D. Cal.
6 Feb. 21, 2013) ("The existence of a license is an affirmative defense to a claim of
7 copyright infringement and the burden of proof is ultimately on the party seeking to
8 avoid infringement liability."). Dismissing the instant case will avoid the prospect
9 of inconsistent verdicts on this issue.

10 Third, this Court should dismiss this case because resolution of the sole issue
11 in this action will not completely resolve the Pennsylvania Action. Even if Mr.
12 Tatro's declaratory judgment claim was somehow cognizable (which, as discussed
13 at § III.B, *infra*, it is not), a ruling in his favor would, at most, merely extend the
14 time that he was licensed under the Licensing Agreement by a few weeks.³ *See*
15 *Martin v. U-Haul Co. of Fresno*, 204 Cal. App. 3d 396, 407-09 (Cal. Ct. App.
16 1988) (determining damages limited to those that could reasonably have accrued
17 during 30 day notice period required for termination of contract "[b]ecause of the
18 30-day notice provision neither party to the dealership contract could reasonably
19 anticipate that damages resulting from a breach of that contract would exceed those
20 potentially accruing during a 30-day period after the breach"); *Mass Bonding Ins.*
21 *Co. v. Johnston & Harder*, 35 A.2d 721, 726 (Pa. 1943) ("The most that defendant
22 is entitled to under this record is the loss of thirty days' net profits by reason of the
23 failure of the plaintiff to give it due notice of [30 days before] the cancellation.")⁴

24 ³ Plaintiff alleges that he did not receive the 30 days notice purportedly required.
25 LSAC expressly reserves its right to asserts that it did in fact provide notice of
26 material breach to Plaintiff 30 days prior to termination of the Licensing Agreement
27 and that Plaintiff failed to cure his breach.

28 ⁴ LSAC cites to both California and Pennsylvania law herein as these are two states'
laws which arguably could apply to the Licensing Agreement. LSAC's citation is

1 Importantly, a ruling in this case would *not* resolve the core issues of the
2 Pennsylvania Action, that is (1) whether Mr. Tatro is liable for copyright
3 infringement *after* termination of the License Agreement, and (2) whether Mr.
4 Tatro is liable for copyright infringement for uses of LSAC's materials that were
5 contrary to the terms of the Licensing Agreement while it was in effect. Further,
6 this Court will not reach issues of copyright infringement, willfulness, and damages
7 – all issues which will be adjudicated in the Pennsylvania Action.

8 Where, as here, the later-filed action is broader and encompasses more issues
9 of dispute between the parties than the sole issue raised in the first-filed action, this
10 factor weighs heavily in favor of dismissal of the first-filed narrower action. *See*
11 *Lateena Girls, LLC v. Latina Media Ventures, LLC*, No. SA-06-CA-217-RF, 2006
12 WL 2547884, at *6 (W.D. Tex. Aug. 9, 2006) (“[T]he better alternative is to allow
13 the broader relief action to proceed, since it certainly would address the relief
14 sought, rather than the restricted declaratory judgment action.”); *see also Budget*
15 *Rent A Car Corp. v. Miljack, Inc.*, 760 F. Supp. 135, 137 (N.D. Ill. 1991)
16 (exercising discretion to not entertain first-filed action where later-filed action
17 encompassed more issues); *Koch Eng'g Co. v. Monsanto Co.*, 621 F. Supp. 1204,
18 1208 (E.D. Mo. 1985) (same).

19 Finally, the convenience of remedies weighs in favor of dismissal of the
20 instant action.⁵ The Pennsylvania Action is progressing at a faster pace than this
21 case. The close of fact discovery in the Pennsylvania Action is set for February 5,

22 not an admission that one of these states' law applies to the parties' agreement, and
23 LSAC reserves its right to later assert that the law of one of these jurisdictions does
24 not govern the parties' agreement.

25 ⁵ The convenience of the parties is a neutral consideration for this Court. Litigating
26 in California is as equally inconvenient for LSAC – a Pennsylvania resident – as
27 litigating in Pennsylvania is for Mr. Tatro – a California resident. *See Kinetic*, 2004
28 WL 2026812, at *4 (“Despite Plaintiff's contentions as to the burden that would be
placed on it in California, it appears to the Court that the Texas forum would be just
as burdensome to Defendant as the California forum would be to Plaintiff.”).

1 2016, whereas the initial pretrial conference in this case will not occur until January
2 25, 2016. *See* Scheduling Order, Pennsylvania Action, D.I. 13 (attached as Ex. 3 to
3 the Gorman Decl.). Thus, the Pennsylvania Action will likely resolve more
4 expeditiously than the instant action, and provide a more convenient forum with
5 respect to speed of relief.

6 **3. The First-Filed Doctrine Is Inapplicable to This**
7 **Anticipatory Lawsuit.**

8 The first-filed doctrine, wherein a court normally gives deference to a first-
9 in-time filed action over a later-filed action, should not impact this Court's
10 discretion to decline jurisdiction over the instant action. That doctrine is
11 inapplicable here where the first-in-time filed action was nothing more than an
12 effort by a party (such as Mr. Tatro) to use the filing of a declaratory judgment
13 action as a tactical device to deprive the real plaintiff in interest (such as LSAC) of
14 its choice of forum. *See Xoxide*, 448 F. Supp. 2d at 1192 ("The Court may, in its
15 discretion, rely on equitable grounds, such as 'when the filing of the first suit
16 evidences bad faith, *anticipatory suit, or forum shopping*,' to determine whether to
17 depart from the first to file rule.") (emphasis in original). Indeed, the "filing of a
18 declaratory judgment action is a red flag that there may be compelling
19 circumstances to depart from the first-to-file rule." *See Inherent.com v.*
20 *Martindale-Hubbell, Lexis/Nexis, Inc.*, 420 F. Supp. 2d 1093, 1100 (N.D. Cal.
21 2006) (citation and internal quotation marks omitted). Where, as here, the two
22 lawsuits are filed close in time and one is filed in anticipation of the other, any
23 deference normally accorded to the first-filed action is eliminated. *See Oliver &*
24 *Tater Enters., Inc. v. Foundations Worldwide, Inc.*, No. CV 13-01683-RGK, 2013
25 WL 4446827, at *4 (C.D. Cal. June 18, 2013) (Klausner, J.) ("The facts support a
26 finding that, while Defendants were claiming to pursue a non-legal resolution, they
27 were preparing an anticipatory filing. Circumstances here weigh against the
28 discretionary application of the first-to-file rule, and the Court declines its

1 application.”).

2 **B. The Court Should Dismiss This Action Because Plaintiff Has Not**
3 **Stated a Cognizable Claim For Relief.**

4 **1. The Court May Dismiss Plaintiff’s Claim Based on Plain**
5 **and Unambiguous Language of the Licensing Agreement.**

6 “A court may resolve contractual claims on a motion to dismiss if the terms
7 of the contract are unambiguous.” *Ellsworth v. U.S. Bank, N.A.*, 908 F. Supp. 2d
8 1063, 1084 (N.D. Cal. 2012). Indeed, “courts have granted motions to dismiss on
9 contract claims where it is clear from the unambiguous terms of the contract that
10 the alleged conduct by the defendant does not constitute a breach of contract.”
11 *Mieuli v. DeBartolo*, No. C-00-3225-JCS, 2001 WL 777447, at *5 (N.D. Cal. Jan.
12 16, 2001); *see Campbell v. Allstate Ins. Co.*, No. 97-9426-CMB, 1998 WL 657488,
13 at *1 (C.D. Cal. Aug. 6, 1988) (dismissing breach of contract claim on basis that the
14 defendant’s acts were consistent with the plain language of the contract and
15 therefore did not breach the contract). “Contract interpretation is a question of
16 law.” *Mendler v. Winterland Production, Ltd.*, 207 F.3d 1119, 1121 (9th Cir.
17 2000).

18 **2. Plaintiff’s Allegations Regarding Purported Breach Fail as a**
19 **Matter of Law.**

20 In the Amended Complaint, Plaintiff asserts a single claim for relief seeking
21 a declaration that LSAC did not properly terminate the parties’ Licensing
22 Agreement because it failed to provide 30 days notice prior to terminating the
23 agreement. *See* FAC.⁶ Plaintiff’s claim is premised on the incorrect conclusion

24 ⁶ At paragraph 13 of the FAC, Plaintiff alleges that “the provision relied on by
25 Defendant is procedurally and substantively oppressive and unconscionable and
26 thus unenforceable.” *See* FAC ¶ 13. This allegation is not in accord with this
27 Court’s November 19 Order. As the Court will recall, Plaintiff’s Original
28 Complaint sought a judicial declaration that, *inter alia*, the Licensing Agreement
contains unenforceable terms. *See* Original Complaint, D.I. 1, Ex. 1 (Gorman
Decl., Ex. 1) ¶¶ 26(b), 28 & p. 7, ¶ C. LSAC moved to dismiss, *inter alia*, this

1 that the Licensing Agreement provides Mr. Tatro with a right to notice before
2 termination. However, this conclusion disregards the plain language of the
3 agreement, and is based on a mistaken interpretation that presumes a conflict
4 between provisions and that does not give effect to the entire contract. Under well-
5 established contract interpretation principles, this Court should find that the contract
6 unambiguously provides Plaintiff with **no** notice right, and should dismiss his claim
7 for relief.⁷

8 The parties' Licensing Agreement expressly and unambiguously provides
9 that LSAC need not provide any notice before ending the license. Indeed, it states
10 that "LSAC may terminate this license at its sole discretion at any time and for any
11 reason." *See* Ex. A ¶ 2. This is reason alone for dismissal of Plaintiff's claim.
12 Plaintiff tries to overcome this clear contractual provision by alleging that it
13 "conflicts" with a provision of LSAC's Licensing Policy stating that "LSAC may
14 terminate any license in the event that a licensee violates a material term or
15 condition of the license, which is not cured by the licensee within 30 days after
16 receipt of written notice of such violation by LSAC." FAC ¶ 10; Ex. B at 4, ¶ 5.

17
18 count because the Plaintiff failed to plead any facts – let alone facts giving rise to a
19 plausible inference – supporting the allegation of unenforceability. *See* D.I. 15-1 §
20 IV.C. The Court granted LSAC's motion to dismiss, and granted Plaintiff leave to
21 amend only with respect to "Plaintiff's claim for breach of the Licensing
22 Agreement." *See* D.I. 27 at 7-8. The Court did not allow Plaintiff leave to amend
23 with respect to his allegations that the Licensing Agreement contains unenforceable
24 terms. As such, Plaintiff's allegation with respect to the enforceability of the
License Agreement should be struck because it violates the Court's November 19
Order and for all the reasons originally stated in LSAC's Original Motion to
Dismiss.

25 ⁷ Without conceding the applicability of California law to any of Plaintiff's claims
26 or any of the purported contracts at issue, LSAC cites to California law herein
27 because Pennsylvania and California law are in accord in relevant part. *See Ins. Co.*
28 *of N. Am. v. Fed. Exp. Corp.*, 189 F.3d 914, 921 (9th Cir. 1999) ("If there is no true
conflict, then the forum is entitled to apply its own law.") (internal quotation marks
omitted).

1 But plaintiff is mistaken, because there is no actual conflict between these
2 provisions.

3 “In construing a contract, a Court is required to construe the contract as a
4 whole, and the language of any apparently inconsistent or contradictory provisions
5 must be interpreted, if reasonably possible, in a way that harmonizes those
6 provisions and gives effect to the entire contract, and not in a way that renders a
7 provision irrelevant, inoperative or meaningless. *See* West’s Ann. Cal. Civ. Code §
8 1641; *Logan v. Union Sec. Ins. Co.*, No. CV 14–1174 DMG, 2015 WL 3745047, at
9 *11 (C.D. Cal. Mar. 31, 2015). Here, the explicit language of the Licensing Policy
10 itself provides the basis for harmonizing these provisions. Specifically, the
11 Licensing Policy makes clear that, with respect to the term of the agreement, the
12 language of the Licensing Agreement supersedes any differing language in the
13 Licensing Policy. *See* Ex. B at 1, ¶ 1 (“Term of Agreement: ***Unless otherwise***
14 ***specified in the licensing agreement***, all new licenses and license renewals begin
15 on July 1 of the initial year and expire on June 30 of the second year.” (emphasis
16 added)). Thus, because the negotiated Licensing Agreement specifies that the
17 license term ends either on June 30, 2017 or “at [LSAC’s] sole discretion at any
18 time and for any reason,” such a provision trumps any “conflicting” term provisions
19 of the Licensing Policy, including any purported 30-day notice provision.

20 Plaintiff’s interpretation of the parties’ agreement is untenable because it puts
21 a provision of the License Agreement in direct conflict with a provision of the
22 Licensing Policy, forcing one or the other to be superfluous. This reading fails to
23 harmonize the two provisions in violation of well-established contract interpretation
24 principles. *See Logan*, 2015 WL 3745047, at *11.

25 Accordingly, because the plain language of the Licensing Agreement and
26 Licensing Policy referenced therein indicates that Licensing Agreement conditions
27 on term supersede those of the Licensing Policy, Plaintiff had no notice right under
28 the Licensing Agreement, and its claim for declaratory relief fails as a matter of

1 law.

2 **C. Alternatively, the Court Should Transfer the Instant Action to the**
3 **Eastern District of Pennsylvania.**

4 As discussed previously, the Court should dismiss this case. However, to the
5 extent the Court is inclined to permit the instant action to survive a motion to
6 dismiss, the action should be transferred to the Eastern District of Pennsylvania.

7 Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses,
8 in the interest of justice, a district court may transfer any civil action to any other
9 district or division where it might have been brought.” Section 1404(a) gives courts
10 broad discretion to “adjudicate motions for transfer according to an individualized,
11 case-by-case consideration of convenience and fairness.” *Stewart Org., Inc v.*
12 *Ricoh Corp.*, 487 U.S. 22, 29 (1988). Transfer must be for the convenience of the
13 parties and witnesses and in the interests of justice. *See* 28 U.S.C. 1404. Courts
14 within the Ninth Circuit balance various considerations that can be used in
15 weighing these factors: (1) Plaintiff’s choice of forum, (2) convenience of the
16 parties, (3) convenience of the witnesses, (4) ease of access to the evidence, (5)
17 familiarity of each forum with the applicable law, (6) feasibility of consolidation of
18 other claims, (7) any local interest in the controversy, and (8) the relative court
19 congestion and time of trial in each forum. *See Kierstead v. Experian Info.*
20 *Solution, Inc.*, No. SACV-10-1694, 2011 WL 1375361, at *2 (C.D. Cal. Apr. 11,
21 2011); *see also Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843
22 (9th Cir. 1986). Weighing these factors demonstrates that transfer of this case to
23 the Eastern District of Pennsylvania is appropriate.

24 **1. The Instant Action Could Have Been Brought In**
25 **Pennsylvania.**

26 The Eastern District of Pennsylvania is a venue in which the instant action
27 could have been brought. It is home to LSAC and where a large portion of events
28 giving rise to the instant action – including negotiation of the Licensing Agreement

1 – took place.

2 **2. The Convenience Factors Weigh In Favor of Transfer.**

3 **a. Plaintiff's Choice of Forum Is Entitled to Little**
4 **Weight.**

5 Plaintiff's choice of forum is entitled to little weight where, as here, the
6 Plaintiff has filed a declaratory judgment action in an effort to forum shop in order
7 to avoid having to litigate in another forum where another party had stated its
8 intention to file a lawsuit. *See Int'l Bhd. of Teamsters v. N. Am. Airlines*, No. C05-
9 0126, 2005 WL 947083, at *3 (N.D. Cal. Apr. 20, 2005) (“[L]ittle deference given
10 to plaintiff's choice of forum in cases of anticipatory suits and forum shopping.”)
11 (citation omitted).

12 **b. The Convenience of Parties Factor Is Neutral.**

13 The Eastern District of Pennsylvania is a more convenient forum for LSAC
14 to litigate this dispute, and keeping the instant case in the Central District of
15 California is inconvenient for, and imposes a financial burden and hardship upon,
16 LSAC. Plaintiff would presumably prefer to litigate in this District, and will likely
17 contend that he will suffer hardship if forced to litigate in the Eastern District of
18 Pennsylvania. Accordingly, this factor is neutral.

19 **c. The Convenience of Witnesses Factor Weighs In**
20 **Favor of Transfer.**

21 In balancing the convenience of witnesses, the “convenience of non-party
22 witnesses is more important factor than the convenience of party witnesses.” *Metz*
23 *v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1147 (C.D. Cal. 2009) (internal
24 quotation marks omitted). Here, the vast majority of witnesses likely to have
25 information pertinent to the instant case are current or former employees of LSAC
26 located in Pennsylvania who had dealings with Mr. Tatro during the license
27 negotiations. By contrast, Plaintiff operates a “sole proprietorship” (FAC ¶ 1), and,
28 thus, he would be the sole witness located in California. Accordingly, because all

1 likely witnesses except for Plaintiff are located in the Pennsylvania area, this factor
2 weighs in favor of transfer. *Metz*, 674 F. Supp. 2d at 1148 (finding this factor
3 weighed in favor of transfer where defendant's witnesses were located out of state
4 and comprised the majority of witnesses who would testify regarding contract
5 negotiations); *see also Szegedy v. Keystone Food Prods.*, No. CV 08-5369-CAS, 2009
6 WL 2767683, at *3-4 (C.D. Cal. Aug. 26, 2009) (concluding same).

7 **d. Ease of Access to Evidence Is a Neutral Factor.**

8 The ease of access to evidence factor is neutral in light of the fact that the
9 parties can each produce digital copies of their evidence. *See May v. Haas*, No.
10 2:12-cv-01791, 2013 WL 4010293, at *7 (E.D. Cal. Aug. 5, 2013) (“[E]ase of
11 access to documents does not weigh heavily in the transfer analysis, given that
12 advances in technology have made it easy for documents to be transferred to
13 different locations.”) (internal quotation marks omitted).

14 **3. The Interest of Justice Factors Weigh In Favor of Transfer.**⁸

15 **a. Court's Familiarity With Governing Law Is Neutral.**

16 This case involves issues of contract interpretation. Whether California or
17 Pennsylvania law applies to those issues, this Court and the Pennsylvania Court are
18 equally capable of applying the appropriate governing law. *See Burke v. USF*
19 *Reddaway, Inc.*, No. 2:12-cv-02641, 2013 WL 85428, at *5 (E.D. Cal. Jan. 8,
20 2013). Accordingly, this factor is neutral.

21
22
23
24

⁸ Although not expressly included as a sub-factor, in evaluating the interests of
25 justice, the fact that the instant action was anticipatorily filed to win a race to the
26 courthouse to ensure Plaintiff of its choice of forum demonstrates that the interests
27 of justice weigh heavily in favor of transfer. *See Gerin v. Aegon USA, Inc.*, No. C
28 06-5407-CBA, 2007 WL 1033472, at *8 (N.D. Cal. Apr. 4, 2007) (“The interests of
justice strongly weigh in favor of granting the motion to transfer in order to
discourage forum-shopping.”).

b. Feasibility of Consolidation With Other Claims Favors Transfer.

“The feasibility of consolidation is a significant factor in a transfer decision, and the pendency of an action in another district is important because of the positive effects it might have in possible consolidation of discovery and convenience to witnesses and parties.” *Cardoza v. T-Mobile USA Inc.*, No. 08-5120-SC, 2009 WL 723843, at *5 (N.D. Cal. Mar. 18, 2009). To the extent the claim pending in the instant action is not dismissed, it can easily be consolidated with the copyright infringement claim that is proceeding at a faster pace in Pennsylvania.

c. Local Interest In the Controversy Is Neutral.

Pennsylvania and California each have interests in protecting their residents and enforcing their contractual rights. Accordingly, this factor is neutral.

d. Relative Court Congestion Weighs In Favor of Transfer.

The Pennsylvania Action is farther along than the instant action. In the Pennsylvania Action, the Court already held a Rule 16 conference in November 2015, discovery is underway, and fact discovery is set to close on February 5, 2016. *See* Pennsylvania Action, D.I. 13 (Gorman Decl., Ex. 3). In the instant action, the Court will not even hear argument on the instant Motion or convene an initial pretrial conference until January 25, 2015 – just 11 days before the close of fact discovery in the Pennsylvania Action. *See* D.I. 16. As such, transfer of this case would likely result in a faster adjudication of the parties’ disputes.

Moreover, a study of U.S. District Courts across the United States during the 12-month period ending March 31, 2014 demonstrates that the median time to trial in the Eastern District of Pennsylvania is 16.7 months, whereas the median time to trial in the Central District of California is 21.4 months. *See* Tab C-5, U.S. District Court – Median Time Intervals from Filing to Disposition of Civil Cases

1 Terminates, by District and Method of Disposition, During the 12-Month Period
2 Ending March 31, 2014, available at [www.uscourts.gov/statistics/table/c-5/federal-](http://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2014/03/31)
3 [judicial-caseload-statistics/2014/03/31](http://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2014/03/31) (attached hereto as Ex. C). Accordingly,
4 because the court congestion is less in the Eastern District of Pennsylvania when
5 compared to the Central District of California, this factor weighs in favor of
6 transfer.

7
8 **IV. CONCLUSION**

9 For the reasons set forth herein, LSAC respectfully requests that the Court
10 exercise its discretion to dismiss the Amended Complaint with prejudice in favor of
11 the pending Pennsylvania Action or for failure to state a claim. Alternatively,
12 LSAC requests that the Court transfer the instant action to the Eastern District of
13 Pennsylvania.

14 Respectfully submitted,

15 DATED: December 17, 2015

MORGAN, LEWIS & BOCKIUS LLP

16 /s/ John V. Gorman

17 Monique E. Cho

18 John V. Gorman

Anita Polott

19 ***Attorneys for Defendant Law School***
20 ***Admission Council, Inc.***

PROOF OF SERVICE

I, John V. Gorman, hereby declare that on December 17, 2015, I filed the foregoing Defendant Law School Admission Council, Inc.'s Motion to Dismiss via the Court's CM/ECF System whereby a notice of filing was sent via email to the following:

René P. Tatro
Steven R. Tekosky
TATRO TEKOSKY SADWICK LLP
333 S. Grand Avenue, Suite 4270
Los Angeles, CA 90071
Telephone: (213) 225-7171
Facsimile: (213) 225-7151
renetatro@ttsmlaw.com
stevetekosky@ttsmlaw.com

Attorneys for Plaintiff Morley Cambridge Tatro

/s/ John V. Gorman
John V. Gorman

Exhibit A



Law School Admission Council
662 Penn Street Newtown, PA 18940-0040
P: 215.968.1162 • F: 215.968.1169

LEGAL AFFAIRS—LICENSING

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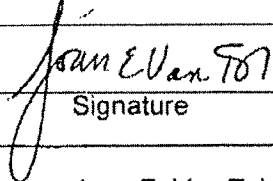
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12. Audit

LSAC, either directly or through its auditing firm, shall have the right to inspect Licensee's records and accounts for the purpose of auditing the accountings and license-fee payments required under this Agreement. Such inspection shall be at LSAC's own expense, and shall occur during regular business hours on mutually agreed upon dates and times. LSAC shall provide Licensee with at least seven days' notice of its intent to exercise this right.

FOR LSAC:

FOR LICENSEE:

	
Signature	Signature
Joan E. Van Tol	
Name	Name
General Counsel	
Title	Title
3/16/15	
Date	Date

08 / 31 / 2015

Exhibit B



LAW SCHOOL ADMISSION COUNCIL LSAT-QUESTION LICENSING POLICY

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Because test specifications and quality-control measures change over time, only those LSAT questions and forms that reflect the current structure of the LSAT are available to licensees. Test questions that appeared on LSAT forms before June 1991 and nondisclosed questions are not available for licensing.

Term of Agreement

Unless otherwise specified in the licensing agreement, all new licenses and license renewals begin on July 1 of the initial year and expire on June 30 of the second year.

License Requirements

1. As part of their licensing proposal, potential licensees must identify the test questions they wish to reproduce and the number of copies of each question they intend to make. Licensees must also provide a detailed explanation about precisely how licensed LSAT content will be used.
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4. All licensed questions within a licensee's work must be clearly identified as such, and a work containing licensed questions must include, in a conspicuous place, the following statement: ***"All actual LSAT questions reproduced within this work are used with the permission of Law School Admission Council, Inc., Box 2000, Newtown, PA 18940, the copyright owner. LSAC does not review or endorse specific test preparation materials, companies, or services, and inclusion of licensed LSAT questions within this work does not imply the review or endorsement of LSAC."***

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6. If a licensee should offer a complete, intact LSAT form to the general public, that form must be accompanied by instructional or explanatory content developed and added by the licensee. Under no circumstances is it permissible to offer LSAT forms for sale to the general public without such additional material.
7. *Licensing LSAT Content for Online Use*

LSAC will license the use of LSAT content for online distribution (including, but not limited to, ebooks, videos, web pages) according to the terms outlined in this document and in individual licensing agreements.

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As part of the licensing proposal, potential licensees must describe with reasonable technical specificity the manner in which files containing LSAC licensed content will be stored and distributed, and all security measures to be used to protect the licensed material, including, but not limited to, encryption, password-protection, etc. It is recommended that licensees use digital rights management (DRM) to provide the protections and limitations detailed above. The type of DRM to be used by the licensee, along with the extent of its capabilities, must be included in the proposal. If the licensee proposes to use security measures other than DRM, the proposal must specify how the licensee will otherwise control access, unauthorized viewing, screen capturing, copying, printing, sharing, and altering of LSAC's licensed content. In addition, the licensee must specify the timeframe for access that will be allowed for each customer and detail steps that will be taken should unauthorized use occur.

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- limit printing to one time,
- allow the document to open only on one device,
- prevent screen capturing,
- control and instantly revoke access if a violation occurs,
- identify abusers,
- expire access after a mutually agreed upon timeframe and/or number of views, and
- maintain a complete audit trail of how, when, and where LSAC's material is being used.

Although LSAC does not endorse a specific DRM program, the following are examples of programs that perform the functions listed above and should offer adequate security:

- <http://www.drm-x.com/DRM-X3.0-Features.aspx>
- <http://www.locklizard.com/index.htm>
- http://www.artistscope.com/digital_rights_management.asp

Use of any DRM format is subject to the terms and conditions of any applicable license agreement between the licensee and the supplier of the applicable DRM format.

8. Licensees must provide LSAC with the name and address of their printer(s).
9. Licensees must provide LSAC with a print, digital, or video sample of any products containing licensed questions as well as a sample of any advertisements or marketing materials for their products or services. These samples must be provided along with or prior to the first licensing accounting, as specified on the licensing agreement.

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The following PrepTests are available for licensing as entire forms at these rates:

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PrepTests 46 – 59	\$5 per test, per copy
PrepTests 32 – 45	\$4 per test, per copy
PrepTests 17 – 31	\$3 per test, per copy
PrepTests 1-16	\$2 per test, per copy
Form 96, unreleased	\$10 per test, per copy
February tests from 1996, 1999, and 2000	\$3 per test, per copy

The fee for licensee reproduction of writing-sample prompts is 2 cents per copy.

There is no fee for licensee copying of test instructions.

2. *Calculating License Fees for Individual Test Questions*

The license fee is determined by the number of copies of each question the licensee will make and the per-question cost. The per-question cost is determined by dividing the relevant per-test fee by 100. For example, a licensee wishing to make 100 copies of 50 questions from PrepTest 40 must pay a license fee of \$200 (\$4 divided by 100 = .04, multiplied by 100 copies, then multiplied by 50 questions).

Licenses are granted only for a specific number of questions and copies, and only after payment of the initial license fee (as specified on the licensing agreement). Licensees must provide an annual accounting of which PrepTest(s) was used, the number of licensed questions used, and the number of copies of each form or question actually made. For print reproduction, the licensing fees are based on the print run, not actual sales. For printed books that are updated frequently, LSAC may make payment adjustments for unsold copies upon proof that the unsold copies have been destroyed and cannot be resold.

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Auxiliary Information

In an effort to increase candidate awareness of LSAC's day-of-test rules and its misconduct and irregularities process, licensees are required to provide information on those topics supplied by LSAC to their clients. LSAC also requires that licensees provide a link from their website to LSAC's information on these topics, <http://www.lsac.org/JD/apply/misconduct-and-irregularities.asp> as provided by LSAC.

08/31/2015

Exhibit C

Table C-5.
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases
Terminated, by District and Method of Disposition,
During the 12-Month Period Ending March 31, 2014

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
TOTAL	199,787	8.6	43,141	5.0	127,635	8.6	26,306	12.7	2,705	24.4
DC	1,748	7.9	818	5.4	886	9.8	9	-	35	31.0
1ST	6,311	12.8	1,127	3.6	3,684	15.5	1,404	14.8	96	27.3
ME	356	7.9	151	5.5	188	9.3	11	14.5	6	-
MA	2,563	9.0	638	2.6	772	7.5	1,099	14.4	54	27.6
NH	471	8.6	75	2.9	208	6.7	181	15.1	7	-
RI	1,988	36.8	97	8.6	1,840	38.4	37	19.5	14	33.1
PR	933	13.0	166	7.5	676	13.4	76	19.0	15	21.6
2ND	18,289	8.7	3,278	4.8	10,477	8.3	4,198	12.0	336	31.9
CT	1,734	9.7	700	6.2	672	10.0	318	17.3	44	34.5
NY,N	1,171	11.0	230	3.4	575	12.7	339	14.4	27	34.7
NY,E	5,601	8.6	1,220	5.6	3,121	8.2	1,163	11.9	97	30.9
NY,S	8,310	8.1	897	3.5	4,941	7.1	2,318	11.3	154	31.5
NY,W	1,262	9.4	204	3.6	994	10.8	55	29.8	9	-
VT	211	9.5	27	4.3	174	9.6	5	-	5	-
3RD	23,793	8.1	2,778	3.9	16,506	7.0	4,259	13.5	250	26.7
DE	1,759	7.7	680	5.0	928	9.0	116	13.6	35	31.4
NJ	6,766	7.5	400	3.0	3,605	4.1	2,714	16.6	47	36.8
PA,E	11,464	8.7	812	3.6	9,313	9.1	1,239	9.3	100	16.7
PA,M	1,596	8.1	412	5.0	1,054	8.7	100	16.0	30	26.7
PA,W	1,939	7.2	309	3.0	1,584	8.1	21	24.3	25	27.0
VI	269	15.6	165	13.1	22	20.0	69	18.1	13	45.9
4TH	12,561	7.6	2,179	6.0	8,857	7.4	1,343	9.9	182	20.1
MD	2,975	7.6	429	7.3	1,923	5.9	582	12.0	41	22.7
NC,E	1,226	8.5	332	8.0	887	8.6	3	-	4	-
NC,M	698	10.9	432	8.5	219	14.5	38	25.1	9	-
NC,W	868	9.1	222	6.7	545	9.1	88	12.1	13	24.3
SC	2,203	9.4	195	3.2	1,918	10.0	57	9.9	33	25.5
VA,E	2,203	5.5	331	4.3	1,311	4.5	508	7.3	53	11.9
VA,W	680	8.5	167	4.0	445	9.4	55	9.4	13	15.0
WV,N	378	9.0	50	4.4	320	9.4	3	-	5	-
WV,S	1,330	6.2	21	6.6	1,289	6.2	9	-	11	23.7

Table C-5. (March 31, 2014—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
5TH	20,750	7.5	5,535	5.0	12,712	7.5	2,151	11.4	352	23.1
LA,E	3,728	4.9	112	1.8	2,493	4.7	1,057	10.4	66	20.5
LA,M	621	12.2	127	9.3	451	11.9	34	26.1	9	-
LA,W	1,133	11.5	408	7.5	654	12.8	44	21.1	27	30.8
MS,N	696	9.8	206	7.6	288	8.2	186	14.3	16	19.5
MS,S	1,454	9.7	805	6.6	585	11.0	38	19.8	26	26.4
TX,N	3,322	6.4	661	4.3	2,619	6.9	1	-	41	22.8
TX,E	2,956	9.1	830	5.0	2,015	10.0	58	19.0	53	26.1
TX,S	4,426	6.8	1,657	4.2	2,054	7.8	642	9.2	73	19.7
TX,W	2,414	6.9	729	5.6	1,553	6.8	91	15.3	41	21.6
6TH	15,991	9.2	4,921	5.7	7,227	8.8	3,642	12.5	201	26.8
KY,E	954	9.0	124	5.4	795	9.1	23	20.0	12	35.4
KY,W	1,030	8.2	172	5.5	804	8.2	43	16.8	11	27.2
MI,E	4,273	8.4	985	3.3	1,443	5.8	1,807	12.9	38	27.2
MI,W	998	8.3	184	2.2	515	8.0	288	12.3	11	29.8
OH,N	2,771	8.5	868	4.6	1,107	10.7	760	10.1	36	16.9
OH,S	2,277	9.6	1,036	6.0	602	11.8	609	12.6	30	29.4
TN,E	1,264	11.3	597	9.0	555	11.9	90	17.1	22	25.6
TN,M	1,432	11.9	341	24.4	1,057	9.8	7	-	27	28.0
TN,W	992	11.2	614	11.7	349	9.5	15	22.9	14	22.8
7TH	16,080	8.6	3,945	5.0	9,773	8.8	2,192	12.3	170	27.3
IL,N	8,154	6.8	2,189	5.1	5,294	7.0	578	11.1	93	31.2
IL,C	778	9.6	355	5.3	409	12.6	1	-	13	29.4
IL,S	2,133	18.7	527	16.8	1,586	19.2	4	-	16	19.0
IN,N	1,351	11.0	231	2.8	569	9.8	537	15.4	14	26.1
IN,S	1,957	8.9	263	3.7	875	7.4	805	11.6	14	27.1
WI,E	1,064	6.1	244	3.1	789	7.2	23	8.5	8	-
WI,W	643	7.5	136	3.1	251	6.0	244	11.1	12	15.2
8TH	15,850	14.1	5,511	9.6	9,081	15.7	1,074	13.5	184	22.5
AR,E	4,565	59.6	1,684	61.1	2,838	59.2	4	-	39	18.4
AR,W	901	12.5	138	12.4	756	12.4	0	-	7	-
IA,N	388	8.6	69	8.4	309	8.6	2	-	8	-
IA,S	481	9.6	99	6.0	214	7.4	153	14.8	15	25.2
MN	4,430	12.6	1,403	1.7	2,207	27.0	792	13.0	28	23.0
MO,E	2,173	8.5	1,030	5.6	1,105	10.9	6	-	32	22.6
MO,W	1,951	10.5	944	7.6	891	12.8	98	12.7	18	23.3
NE	496	9.0	54	2.2	411	9.4	9	-	22	22.4
ND	237	13.5	7	-	222	13.2	4	-	4	-
SD	228	14.3	83	11.7	128	14.5	6	-	11	30.9

Table C-5. (March 31, 2014—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
9TH	33,582	7.4	8,725	4.3	21,025	7.7	3,377	13.3	455	24.1
AK	249	9.2	35	5.2	210	10.5	0	-	4	-
AZ	2,439	7.7	128	2.3	1,679	6.4	584	13.5	48	29.2
CA,N	4,979	8.1	984	4.4	2,478	7.0	1,459	12.3	58	28.4
CA,E	2,577	8.8	880	5.7	1,618	10.4	50	19.0	29	31.5
CA,C	11,560	5.8	4,073	4.3	7,130	6.6	211	14.2	146	21.4
CA,S	2,345	6.6	385	3.3	1,224	5.3	711	13.2	25	27.0
HI	696	7.2	348	4.8	292	8.3	42	23.7	14	14.5
ID	392	11.6	32	1.9	277	10.8	72	16.7	11	23.6
MT	435	9.2	142	4.6	152	7.4	129	14.1	12	19.1
NV	2,143	8.9	265	3.9	1,776	9.8	86	8.6	16	41.5
OR	1,926	11.3	502	8.6	1,375	11.6	8	-	41	22.5
WA,E	865	13.0	262	5.4	586	14.8	6	-	11	24.1
WA,W	2,917	6.7	657	2.3	2,210	7.5	10	20.2	40	18.7
GUAM	29	23.2	7	-	13	28.9	9	-	0	-
NMI	30	14.9	25	14.0	5	-	0	-	0	-
10TH	8,503	8.8	2,114	4.6	5,203	9.2	1,042	13.7	144	24.7
CO	2,658	6.2	905	4.4	1,630	6.6	81	18.4	42	27.2
KS	1,246	8.6	339	4.8	787	9.0	103	17.8	17	24.6
NM	998	10.3	259	6.5	412	10.7	306	12.9	21	26.9
OK,N	663	9.6	66	3.1	573	10.2	17	18.2	7	-
OK,E	428	13.7	20	2.5	394	14.0	7	-	7	-
OK,W	1,089	8.5	251	4.1	469	8.0	347	10.8	22	18.2
UT	1,204	11.6	208	5.4	880	12.4	94	22.8	22	36.4
WY	217	9.6	66	3.6	58	8.4	87	13.2	6	-
11TH	26,329	8.0	2,210	4.0	22,204	8.1	1,615	12.2	300	20.5
AL,N	4,906	22.7	48	2.0	4,808	22.7	22	30.2	28	21.7
AL,M	728	9.8	71	4.4	605	9.6	41	17.7	11	24.9
AL,S	535	8.1	117	3.8	396	8.5	16	16.3	6	-
FL,N	1,357	6.7	61	3.3	1,275	6.9	10	22.3	11	24.5
FL,M	6,748	8.3	509	6.2	6,034	8.1	112	17.4	93	21.4
FL,S	6,717	4.7	626	3.2	5,943	4.8	57	11.5	91	16.1
GA,N	4,055	6.7	363	2.6	2,318	4.8	1,339	11.2	35	28.1
GA,M	775	9.8	230	5.8	523	11.0	3	-	19	25.1
GA,S	508	8.9	185	6.9	302	10.1	15	19.7	6	-

NOTE: Median time intervals are not computed when fewer than 10 cases reported. This table excludes land condemnations, prisoner petitions, deportation reviews, recovery of overpayments, and enforcement of judgments. Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases. For fiscal years prior to 2001, this table included data on recovery of overpayments and enforcement of judgments.